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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PUGET SOUNDKEEPER ALLIANCE,)	
)	
Plaintiff,)	
v.)	
)	COMPLAINT
ACCURATE SM, LLC,)	
)	
Defendant.)	
)	
_____)	

I. INTRODUCTION

1. This action is a citizen suit brought under Section 505 of the Clean Water Act (“CWA”) as amended, 33 U.S.C. § 1365. Plaintiff, Puget Soundkeeper Alliance (“Soundkeeper”), seeks declaratory judgment, injunctive relief, the imposition of civil penalties, and the award of costs, including attorneys’ and expert witnesses’ fees, for Defendant Accurate SM, LLC’s, dba Accurate Sheet Metal Inc. (“Accurate SM’s”), repeated and ongoing violations of the terms and conditions of its National Pollutant Discharge Elimination System (“NPDES”) permit authorizing certain stormwater discharges of pollutants from Accurate SM’s facility in Mukilteo, Washington to navigable waters.

II. JURISDICTION AND VENUE

2. The Court has subject matter jurisdiction over Soundkeeper's claims under Section 505(a) of the CWA, 33 U.S.C. § 1365(a). Sections 309(d) and 505(a) and (d) of the CWA, 33 U.S.C. §§ 1319(d) and 1365(a) and (d), authorize the relief Soundkeeper requests.

3. Under Section 505(b)(1)(A) of the CWA, 33 U.S.C. § 1365(b)(1)(A), Soundkeeper notified Accurate SM of its violations of the CWA and of Soundkeeper's intent to sue under the CWA by letter dated and postmarked October 2, 2024 ("Notice Letter"). A copy of the Notice Letter is attached to this complaint as Exhibit 1. The allegations in the Notice Letter are incorporated herein by this reference. In accordance with section 505(b)(1)(A) of the CWA, 33 U.S.C. § 1365(b)(1)(A) and 40 C.F.R. § 135.2(a)(1), Soundkeeper notified the Administrator of the United States Environmental Protection Agency ("EPA"), the Administrator of EPA Region 10, and the Director of the Washington Department of Ecology ("Ecology") of its intent to sue Accurate SM by mailing copies of the Notice Letter to these individuals on October 2, 2024.

4. At the time of the filing of this Complaint, more than sixty days have passed since the Notice Letter and copies thereof were issued in the manner described in the preceding paragraph.

5. The violations complained of in the Notice Letter are continuing and/or are reasonably likely to re-occur.

6. At the time of the filing of this Complaint, neither the EPA nor Ecology has commenced any action constituting diligent prosecution to redress the violations alleged in the Notice Letter.

1 Accurate SM's violations of the CWA. The relief sought in this lawsuit can redress the injuries
2 to these interests.

3 11. Soundkeeper has organizational standing to bring this action. Soundkeeper has
4 been actively engaged in a variety of educational and advocacy efforts to improve water quality
5 and to address sources of water quality degradation in the waters of Western Washington,
6 including the Cedar-Sammamish River watershed. As detailed herein and in the Notice Letter,
7 Accurate SM has failed to comply with numerous requirements of its NPDES permit including
8 completing corrective actions, compliance with water quality standards and sampling
9 requirements, Stormwater Pollution Prevention Plan, maintenance, monitoring, recordkeeping,
10 and permit violation reporting requirements. As a result, Soundkeeper is deprived of information
11 necessary to properly serve its members by providing information and taking appropriate action
12 to advance its mission. Soundkeeper's efforts to educate and advocate for greater environmental
13 protection, and to ensure the success of environmental restoration projects implemented for the
14 benefit of its members are also obstructed. Finally, Soundkeeper and the public are deprived of
15 information that influences members of the public to become members of Soundkeeper, thereby
16 reducing Soundkeeper's membership numbers. Thus, Soundkeeper's organizational interests
17 have been adversely affected by Accurate SM's violations. These injuries are fairly traceable to
18 Accurate SM's violations and are redressable by the Court.

19 12. Defendant Accurate SM is a corporation authorized to conduct business under the
20 laws of the state of Washington.

21 13. Accurate SM operates an approximately 1.5-acre sheet metal manufacturing and
22 assembling facility, located at or about 4301 Russell Road, Mukilteo, WA 98275 (referred to
23 herein as the "facility").
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IV. LEGAL BACKGROUND

14. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person, unless in compliance with the provisions of the CWA. A discharge of a pollutant from a point source to waters of the United States without authorization by a NPDES permit, issued under Section 402 of the CWA, 33 U.S.C. § 1342, is prohibited.

15. The state of Washington has established a federally approved state NPDES program administered by Ecology. Wash. Rev. Code § 90.48.260; Wash. Admin. Code ch. 173-220. This program was approved by the Administrator of the EPA pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b).

16. Under Section 402 of the CWA, 33 U.S.C. § 1342, Ecology has repeatedly issued iterations of the Industrial Stormwater General Permits, most recently on November 20, 2019, effective January 1, 2020, and set to expire December 31, 2024 (the “2020 ISGP”). The previous permit was issued December 3, 2014, became effective January 2, 2015, and expired December 31, 2019 (the “2015 ISGP”). The 2015 ISGP and 2020 ISGP (collectively, “the Permit”), contain substantially similar requirements and authorize those that obtain coverage thereunder to discharge stormwater associated with industrial activity, a pollutant under the CWA, and other pollutants contained in the stormwater to waters of the United States subject to certain terms and conditions. Ecology issued the forthcoming permit on December 2, 2024, which will go into effect on January 1, 2025 (the “2025 ISGP”). The terms of the 2025 ISGP are substantially similar to those of the 2015 ISGP and 2020 ISGP, and its terms require implementation of source control and treatment best management practices from the 2015 ISGP and 2020 ISGP. All of the ongoing violations alleged in this Complaint will continue to be ongoing at the time the 2025 ISGP goes into effect.

at Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342. Accurate SM's violations of the Permit and the CWA are set forth in sections I through VII of the Notice Letter attached hereto as Exhibit 1 and are incorporated herein by this reference. In particular, and among the other violations described in the Notice letter, Accurate SM has violated the Permit by failing to comply with water quality standards, failing to comply with AKART standards, failing to prepare and implement an adequate SWPPP, failing to implement BMPs to control water quality, failing to collect quarterly samples, failing to timely submit Discharge Monitoring Reports ("DMRs"), failing to collect representative samples, failing to comply with visual monitoring requirements, failing to implement corrective actions, failing to complete accurate and complete annual reports, failing to record information, failing to retain records, and failing to report Permit violations.

22. Accurate SM discharges stormwater from the facility containing levels of pollutants that exceed the benchmark values established by the Permit, including the days on which Accurate SM collected samples from Monitoring Point 4301, with the results identified in Table 1, and is likely to continue discharging comparably unacceptable levels of pollutants in its stormwater:

Table 1: Benchmark Exceedances

Quarter in which sample was collected	Turbidity (benchmark 25 NTU)	Copper (benchmark 14 µg/L)	Zinc (benchmark 117 µg/L)	NWTPH-Dx (benchmark 10 mg/L)
Q4 2020			594	
Q1 2021		50.4	3800	
Q2 2021		56.6	1850	
Q3 2021	84	16.6	853	
Q4 2021	295	130	3920	
Q1 2022	652	75.9	3870	
Q2 2022	197	29.1	1890	
Q4 2022			2090	
Q1 2023		71	1280	15.3

Q2 2023		27.7	3100	
Q3 2023		33.6	1080	
Q4 2023	45.1	34.4	331	
Q1 2024		15.6	547	
Q2 2024	39.2	17	813	
Q3 2024		25.5	714	

23. The stormwater samples identified in Table 1 are representative of and accurately characterize the quality of stormwater discharges generated by the facility during the associated calendar quarters. The stormwater monitoring data provided in Table 1 shows benchmark exceedances included in the stormwater monitoring results that Accurate SM submitted to Ecology.

24. Accurate SM's stormwater discharges are causing or contributing to violations of water quality standards and therefore violate Condition S10.A of the Permits. Discharges from Accurate SM's facility contribute to the polluted conditions of the waters of the state, including the water quality standards of Big Gulch Creek and Puget Sound. Discharges from Accurate SM's facility contribute to the ecological impacts that result from the pollution of these waters and to Soundkeeper and its members' injuries resulting therefrom. These requirements and Accurate SM's violations thereof are described in detail in section I.A of the Notice Letter, attached hereto as Exhibit 1, and incorporated herein by this reference.

25. Accurate SM's exceedances of the benchmark values indicate that Accurate SM is failing to apply AKART to its discharges and is failing to implement an adequate SWPPP and BMPs. Accurate SM violated and continues to violate Conditions S10 and S3 of the Permits by not developing, modifying, and/or implementing BMPs in accordance with the requirements of the Permit, and/or by not applying AKART to discharges from the facility. These requirements

1 and Accurate SM's violations thereof are described in detail in section I.B and section II of the
2 Notice Letter, attached as Exhibit 1, and incorporated herein by this reference.

3 26. Accurate SM has violated and continues to violate the monitoring requirements of
4 the Conditions S4.B, S5.A, S7, and S9.B of the Permits. Accurate SM has failed to sample its
5 stormwater discharges once during every calendar quarter at each distinct point of discharge
6 offsite except for substantially identical outfalls. Accurate SM failed to submit DMRs by the
7 prescribed deadline in Permit Condition S9. Accurate SM failed to collect representative samples
8 as required by Permit Condition S9. Accurate SM failed to comply with visual monitoring
9 requirements required by Permit Condition S7 by failing to conduct Industrial Stormwater
10 Monthly Inspection Reports, failing to maintain the requisite inspection reports and checklists,
11 and failing to make the requisite certifications and summaries by qualified personnel each and
12 every month for the last five years. Accurate SM's violations of the Permit's monitoring
13 requirement are described in section III of the Notice Letter, attached hereto as Exhibit 1, and
14 incorporated herein by this reference. All these violations are reasonably likely to recur.

15 27. Accurate SM triggered Level One Corrective Action requirements for each
16 benchmark exceedance identified in Table 1 above. Accurate SM has violated the requirements
17 of Condition S8.B of the Permits by failing to conduct Level One Corrective Action
18 requirements in accordance with the Permit's conditions, including the required inspection to
19 investigate the cause; review, revision, and certification of the SWPPP; the required
20 implementation of additional BMPs; and the required summarization in the Annual Report, each
21 time during the past five years that its quarterly stormwater sampling results were greater than a
22 benchmark, including the benchmark exceedances listed in Table 1 above. These Corrective
23 Action requirements and Accurate SM's violations thereof are described in section IV.A of the
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1 Notice Letter, attached hereto as Exhibit 1, and are incorporated herein by this reference. These
2 violations are reasonably likely to recur.

3 28. Accurate SM triggered Level Two Corrective Action requirements for each
4 benchmark exceedance identified in Table 1 above that occurred in any two quarters of a
5 calendar year. Accurate SM has violated the requirements of Condition S8.C of the Permits by
6 failing to conduct a Level Two Corrective Action in accordance with Permit conditions,
7 including the required review, revision, and certification of the SWPPP, the required
8 implementation of additional structural source control BMPs, and the required summarization in
9 the Annual Report, each time during the past five years that its quarterly stormwater sampling
10 results were greater than a benchmark, for any two quarters during a calendar year, including the
11 benchmark exceedances listed in Table 1 above. These violations include Accurate SM's failure
12 to perform Level Two Corrective Action requirements for copper and zinc triggered by its
13 stormwater sampling during calendar year 2021; for turbidity, zinc, and copper triggered by its
14 stormwater sampling during calendar year 2022; for zinc and copper triggered by its stormwater
15 sampling during calendar year 2023; and for zinc and copper triggered by its stormwater
16 sampling during calendar year 2024. These corrective action requirements and Accurate SM's
17 violations thereof are described in section IV.B of the Notice Letter, attached hereto as Exhibit 1,
18 and are incorporated herein by this reference. These violations are reasonably likely to recur.

19 29. Accurate SM triggered Level Three Corrective Action requirements for each
20 benchmark exceedance identified in Table 1 above that occurred in any three quarters of a
21 calendar year. Accurate SM has violated the requirements of Condition S8.D of the Permits by
22 failing to conduct a Level Three Corrective Action in accordance with Permit conditions,
23 including the required review, revision, and certification of the SWPPP, the required preparation
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1 and submission of an engineering report describing additional treatment BMPs, the required
2 submission of an Operation and Maintenance Manual, the required implementation of additional
3 treatment BMPs, and the required summarization in the Annual Report, each time during the past
4 five years that its quarterly stormwater sampling results were greater than a benchmark, for any
5 three quarters during a calendar year, including the benchmark exceedances listed in Table 1
6 above. These violations include Accurate SM's failure to fulfill these obligations for zinc and
7 copper triggered by its stormwater sampling during calendar year 2021; zinc triggered by its
8 stormwater sampling during calendar year 2022; zinc and copper triggered by stormwater
9 sampling during calendar year 2023; and zinc and copper triggered by stormwater sampling
10 during calendar year 2024. These corrective action requirements and Accurate SM's violations
11 thereof are described in section IV.C of the Notice Letter, attached hereto as Exhibit 1, and are
12 incorporated herein by this reference. These violations are reasonably likely to recur.

13 30. Accurate SM has failed to comply with the requirement to submit an accurate and
14 complete annual report to Ecology each year as required Condition S9.B of the 2015 Permit and
15 Condition S9.C of the 2020 Permit. Accurate SM has failed to comply with the requirement to
16 document its corrective actions as required by Permit Conditions S8.B-D. Accurate SM has
17 violated these conditions because the annual reports submitted by Accurate SM do not include
18 the required information including as to stormwater problems and corrective actions. These
19 requirements and Accurate SM's violations thereof are described in section V of the Notice
20 Letter, attached hereto as Exhibit 1, and are incorporated herein by this reference. These
21 violations are reasonably likely to recur.

22 31. Accurate SM has failed and continues to fail to comply with the recordkeeping
23 requirements of Permit Condition S4.B.4 of the Permits. Accurate SM does not record and retain
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1 specified information for each stormwater sample taken, including the sample date and time, a
2 notation describing if Accurate SM collected the sample within the first twelve hours of a
3 stormwater discharge event, an explanation of why Accurate SM could not collect a sample
4 within the first twelve hours of a stormwater discharge event, the sample location, method of
5 sampling and of preservation, and the individual performing the sampling, as required by the
6 Permit Condition. These requirements and Accurate SM's violations thereof are described in
7 section VI.A of the Notice Letter, attached hereto as Exhibit 1, and are incorporated herein by
8 this reference. These violations are reasonably likely to recur.

9 32. Accurate SM has failed and continues to fail to comply with recordkeeping
10 requirements of Permit Condition S9.C of the 2015 ISGP and S9.D. of the 2020 ISGP. Accurate
11 SM does not retain for a minimum of five years a copy of the current Permit, a copy of Accurate
12 SM's coverage letter, records of all sampling information, inspection reports including required
13 documentation, any other documentation of compliance with permit requirements, all equipment
14 calibration records, all BMP maintenance records, all original recordings for continuous
15 sampling instrumentation, copies of all laboratory results, copies of all required reports, and
16 records of all data used to complete the application for the Permit, as required by the Permit
17 Conditions. These requirements and Accurate SM's violations thereof are described in section
18 VI.B of the Notice Letter, attached hereto as Exhibit 1, and are incorporated herein by this
19 reference. These violations are reasonably likely to recur.

20 33. Conditions S9.E of the 2015 Permit and S9.F of the 2020 Permit require Accurate
21 SM to take certain actions, including reporting to Ecology, in the event Accurate SM is unable to
22 comply with any terms and conditions of the Permit which may endanger human health or the
23 environment. Accurate SM has failed to comply with these requirements of the Permit by failing
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1 to report and subsequently correct permit violations, including each and every time Accurate SM
2 failed to comply with corrective action requirements as described above in paragraphs 27-29,
3 each and every time Accurate SM failed to sample a stormwater discharge as described above in
4 paragraph 26, and each and every time Accurate SM discharged stormwater with amounts of
5 pollutants in excess of the Permit benchmarks as described in paragraph 22 above. These
6 violations are reasonably likely to recur.

7 34. A significant penalty should be imposed against Accurate SM under the penalty
8 factors set forth in 33 U.S.C. § 1319(d).

9 35. Accurate SM's violations were avoidable had Accurate SM been diligent in
10 overseeing facility operations and maintenance.

11 36. Accurate SM benefited economically as a consequence of its violations and
12 failure to implement improvements at the facility.

13 37. Accurate SM's violations caused and contributed to pollution in the water column
14 and sediments of the receiving water, which may be ameliorated by an order from the Court
15 requiring clean up or monitoring.

16 VI. CAUSE OF ACTION

17 38. The preceding paragraphs and the allegations in the Notice Letter attached hereto
18 as Exhibit 1 are incorporated herein.

19 39. Accurate SM's violations of the Permit, described herein and in the Notice Letter,
20 constitute violations of "effluent standards or limitations" under the CWA per 33 U.S.C. §
21 1365(a)(1) and (f)(7).

22 40. No agency has taken an enforcement action constituting diligent prosecution or
23 otherwise precluding claims under 33 U.S.C. §§ 1319 or 1365(a).

41. Prior notice of violations and claims was provided to Accurate SM and others as required.

42. These violations committed by Accurate SM are ongoing or are reasonably likely to continue to occur. Any and all additional violations of the Permit and the CWA which occur after those described in Soundkeeper's Notice Letter, but before a final decision in this action, should be considered ongoing violations subject to this Complaint.

43. Without the imposition of appropriate civil penalties and the issuance of an injunction, Accurate SM is likely to continue to violate the Permit and the CWA to the further injury of Soundkeeper, its members, and others.

VII. RELIEF REQUESTED

Wherefore, Soundkeeper respectfully requests that this Court grant the following relief:

A. Issue a declaratory judgment that Accurate SM has violated and continues to be in violation of the Permit and the CWA;

B. Enjoin Accurate SM from operating the facility in a manner that results in further violations of the Permit and the CWA;

C. Order Accurate SM to immediately implement a SWPPP that complies with the Permit at the facility;

D. Order Accurate SM to allow Soundkeeper to participate in the development and implementation of Accurate SM's SWPPP and compliance plan;

E. Order Accurate SM to provide Soundkeeper, for a period beginning on the date of the Court's Order and running for three years after Accurate SM achieves compliance with all of the conditions of the Permit, with copies of all reports and other documents which Accurate SM

1 submits to Ecology regarding Accurate SM's coverage under the Permit at the facility at the time
2 these documents are submitted;

3 F. Order Accurate SM to take specific actions to remediate the environmental harm
4 caused by its violations;

5 G. Order Accurate SM to pay civil penalties of \$66,712 per day of violation for each
6 violation committed by Accurate SM, pursuant to Sections 309(d) and 505(a) of the CWA, 33
7 U.S.C. §§ 1319(d) and 1365(a), and 40 C.F.R. §§ 19 and 19.4;

8 H. Award Soundkeeper its litigation expenses, including reasonable attorneys' and
9 expert witness fees, as authorized by Section 505(d) of the CWA, 33 U.S.C. § 1365(d), and any
10 other applicable authorization; and

11 I. Award such other relief as this Court deems appropriate.
12

13 RESPECTFULLY SUBMITTED this 4th day of December, 2024

14 **SMITH & LOWNEY, PLLC**

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